

46 Am. Jur. 2d Judges § 203

American Jurisprudence, Second Edition | February 2022 Update

Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

D. Waiver and Estoppel

§ 203. Failure to make timely objection to disqualification of judge as effecting waiver or estoppel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  53

A.L.R. Library

[Time for asserting disqualification of judge, and waiver of disqualification, 73 A.L.R.2d 1238](#)

An untimely objection or motion to disqualify a judge waives the grounds for recusal.¹ The reason for this rule is to prevent litigants from waiting to see whether they win, and if they lose moving to disqualify the judge.²

Even though a litigant timely filed its objection to a judge with the court clerk, the litigant's failure to inform the judge of the objection resulted in a waiver of the objection.³

In jurisdictions where a statute or rule fixes the time within which to object to a judge,⁴ the unexplained failure to assert the disqualification within the specified time generally renders a subsequent objection untimely and ineffectual.⁵ A party who fails to timely seek disqualification after discovering grounds therefor is procedurally barred from raising the issue, and forever waives asserting the ground for disqualification.⁶ For instance, a plaintiff in a medical malpractice action waived the issue of the trial judge's recusal, where the judge informed the plaintiff of the judge's personal friendship with the defendant physician at the beginning of the hearing on the defendant's motion for summary judgment, the judge offered the plaintiff an opportunity to object and the plaintiff did not do so, the plaintiff did not file a recusal motion in the seven days between the hearing and the entry of judgment, and the plaintiff objected to the judge's remaining on the case only after the trial court ruled in favor

of the defendant on the defendant's summary judgment motion.⁷ Similarly, an orthopedic resident waived a challenge to the trial judge's failure to recuse, based on the judge's relationship as first cousin to a witness named in the discovery documents, which the resident asserted created the appearance of impartiality, by failing to seek the judge's disqualification after the judge forthrightly disclosed the relationship to the witness prior to trial, in an employment discrimination and retaliation action against an orthopedic residency program, the program's director, and others premised on the resident's probation from the residency program, which the resident claimed was due to gender bias.⁸

A party seeking disqualification may, however, show cause for delay in doing so.⁹

CUMULATIVE SUPPLEMENT

Cases:

Although no motion for recusal of judge was made in termination of parental rights action, appellate court would elect, in its discretion, to invoke appellate procedure rule, stating that appellate court may suspend rules to prevent manifest injustice, and address parents argument that trial judge was unfairly biased against them. North Carolina Rule of Appellate Procedure 2. *Matter of Z.V.A.*, 373 N.C. 207, 835 S.E.2d 425 (2019).

[END OF SUPPLEMENT]

© 2022 Thomson Reuters. 33-34B © 2022 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Horsford v. Board Of Trustees Of California State University](#), 132 Cal. App. 4th 359, 33 Cal. Rptr. 3d 644 (5th Dist. 2005).
- 2 [Office of Disciplinary Counsel v. Au](#), 107 Haw. 327, 113 P.3d 203 (2005), reconsideration filed, (July 5, 2005).
As to timeliness of objection, see §§ 168 to 174.
- 3 [In re Approximately \\$17,239.00](#), 129 S.W.3d 167 (Tex. App. Houston 14th Dist. 2003).
- 4 § 170.
- 5 [Jarallah v. Pickett Suite Hotel](#), 193 Ga. App. 325, 388 S.E.2d 333 (1989); [Harris v. State](#), 160 S.W.3d 621 (Tex. App. Waco 2005).
- 6 [State v. McHenry](#), 268 Neb. 219, 682 N.W.2d 212 (2004).
- 7 [Dale v. Kolb](#), 61 So. 3d 251 (Ala. 2010).
- 8 [Shervin v. Partners Healthcare System, Inc.](#), 804 F.3d 23, 98 Fed. R. Evid. Serv. 922 (1st Cir. 2015).
- 9 § 174.

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.